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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 18

M. J. PUFAHL, RECEIVER OF THE AUSTIN NATIONAL BANK OF CHICAGO, ILLINOIS, A CORPORATION,
Petitioner,

v.

ESTATE OF ELVIRA J. PARKS, DECEASED,
Respondent.

SUPPLEMENTAL MEMORANDUM ON BEHALF OF PETITIONER.

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SUPPLEMENTAL MEMORANDUM ON BEHALF OF PETITIONER.

By leave of court first had and obtained:

Petitioner submits herewith a memorandum of cases (with brief explanatory comment where necessary), bearing primarily on the point raised in the argument concerning the relief which might have been afforded petitioner by a bill in equity filed in the State court, and the effect or consequence of petitioner not following that course.

A.

Under Illinois law the Probate Court has equitable jurisdiction and powers in the settlement and allowance of

claims against the estates of decedents and can render, in such cases, the same relief which might be rendered in a bill in equity to establish such claims.

(1) Statutory Provision Covering Jurdisdiction of Probate Courts in Illinois.

"Probate Courts shall have original jurisdiction in all matters of probate, the settlement of estates of deceased persons, the appointment of guardians and conservators, and settlement of their accounts * * *." (Section 303, Ch. 37, Smith-Hurd Revised Statutes of Illinois, 1935)—NOTE: The foregoing statutory provision is almost identical in language with the constitutional provision (Constitution of 1870, Article 6, Section 20, Smith-Hurd Revised Statutes, 1935).

(2) Court Decisions Concerning the Equity Powers of Probate Courts.

Edward F. Trego, Trustee, Plaintiff in Error, v. *Estate of James A. Cunningham, Deceased,* 267 Ill. 367, 373, 374.

(Pp. 373-374) "The claimant alleged the insolvency of the principal maker and of the sureties * * * and asked for contribution of one-third of the amounts of the notes * * *. That was an appeal to the equitable powers of the probate court, and that court, although without general chancery jurisdiction, has equitable jurisdiction in the settlement and allowance of claims. To avoid the delay, expense and embarrassment in the settlement of estates by requiring a resort, in the first place, to a court of equity, it will proceed in a case of an equitable character as though a bill in chancery has been filed, and will hear the evidence, investigate the claim, and apply equitable rules in determining the judgment * * *. In such a case the court will act substantially as a court of equity, disregarding mere matters of form and looking to the substance to determine the equities of the parties. * * *

(374) This suit was, in substance, a proceeding in chancery which might have been prosecuted in a court of chancery, where there would be no trial by a jury, and the probate court, when called upon to grant the same relief upon the same equitable principles, would properly adopt the same procedure."

(Above case cited on same point of jurisdiction and procedure in *Sebree* v. *Sebree*, 293 Ill. 228, 235, 236)

Matthews v. *Kerfoot*, 167 Ill. 313, 319, 320.

(P. 319) "The real question in this case is, what were the rights of the parties under the contract set out in the foregoing statement? The claimant's contention is, *that by the terms of the contract there was vested in him an interest in the land* described in the contract and in the proceeds arising therefrom after the sale of the land * * *. The contention of the executors of the estate of George L. Matthews, defendants in the probate court of Cook County, where the claim was filed, first, and appellants here, is, that Kerfoot had abandoned the contract before the sale.

(P. 320) "It was held in Doggett v. Dill, 108 Ill. 560, that the probate court, in the matter of claims against estates, exercises a jurisdiction equitable in its nature, and if the estate is liable under the contract, judgment could be entered against the estate. (Hurd v. Slaten, 43 Ill. 348; Mason v. Tiffany, 45 Id. 392). The question whether the contract gave Samuel H. Kerfoot an equitable interest in the land and an interest in the proceeds arising from the sale thereof must be determined from the construction of the contract, and whether it was the intention of Matthews and Cornwell, the parties thereto, that Kerfoot should acquire an equitable interest in the land."

Foreman State Trust & Sav. Bank v. *Tauber*, 348 Ill. 280, 284, 285; 180 N. E. 827, 829.

(P. 829, Reporter citation) "It is first contended by plaintiff in error that the probate court had no

jurisdiction to allow the claim of defendant in error because * * * (2) the action, if any, was one that should have been brought in a court of equity; and (3) the claim was contingent. * * *

(P. 829) "If it were true that the claim is one which is enforceable on equitable principles only, and not by an action at law, it does not follow that the probate court was without jurisdiction to pass upon the claim and either allow or deny it, because the probate courts of this state, in the adjustment and allowance of claims against the estates of deceased persons, are invested with equitable jurisdiction. Henry v. Caruthers, 196 Ill. 136, 63 N. E. 629; Estate of Ramsay v. Whitbeck, 183 Ill. 550, 56 N. E. 322. It is true that, where a claim is such that it remains contingent during the whole of the period fixed by statute (Smith-Hurd Rev. Stat. 1931, c. 3, Sec. 71) for presenting claims against the estate of a deceased person, it cannot be allowed against the estate. Beebe v. Kirkpatrick, 321 Ill. 612, 152 N. E. 539, 47 A. L. R. 891; Chicago Title & Trust Co. v. Fine Arts Building, 288 Ill. 142, 123 N. E. 300; Union Trust Co. v. Shoemaker, 258 Ill. 564, 101 N. E. 1050. The claim presented by defendant in error against the estate of Max Tauber was not, however, a contingent claim."

Also see:

In re Corrington's Estate, 124 Ill. 363, 366
Pollock, Adm. v. *Cantlin*, 253 Ill. App. 229, 234
In re Estate of Kinsey, 261 Ill. App. 481, 487.

(3) Application of Foregoing Decisions to the Instant Case in View of the Procedure Shown by the Transcript of Record.

(a) The record indicates that the procedure followed, the points raised, and the relief asked, by petitioner in the Probate Court, and in the Appellate Courts, constituted in sub-

stance and legal effect, proceedings in equity and entitled petitioner to equitable relief, in that the opinion of the Appellate Court establishes that:

(1) Petitioner contended his claim arose under Section 5152 R. S. and was binding upon the executors (and the assets in their hands) and was "not such an ordinary claim as would be barred by Chapter 3, par. 71, Section 70, Illinois Revised Statutes, 1935" (R. 21).

(2) Petitioner contended that the non-claim statute "was not designed to bar a claim arising by virtue of the Federal statute which was not absolute and which did not accrue until after the one year period for filing claims had expired" (R. 21).

(3) Petitioner contended that the Federal assessment statute "creates a special class of claim which is charged as a lien upon the estate of the deceased stockholder, and which is not governed by the laws of Illinois relative to the administration of estates of decedents" (R. 23).

(b) The Probate Court, and the Appellate Courts on review, sitting as courts of equity under the issues raised, should have accorded petitioner the relief prayed.

Illinois Merchants Trust Company v. *Turner*, 341 Ill. 101, 105.

> "The law is well settled in this state that when adjudicating upon that class of questions over which it has general jurisdiction, the Probate Court is entitled to as liberal intendments in favor of its jurisdiction as are extended to the courts of general jurisdiction."

Seabury v. *Green*, 294 U. S. 165.

> (P. 168) "Section 64 imposes liability upon the stockholder while living. Section 66 lays the same burden upon his estate. The purpose of the latter is to

make the estate liable for the comptroller's assessment made after the stockholder's death just as it is liable for decedent's indebtedness arising before he died."

. . . . . .

(P. 169) "As suggested in Forrest v. Jack, supra, the enforcement of liability imposed by Section 66 may not be thwarted or impeded by state law. The state court failed to enforce that liability. It should have held that petitioner is entitled to judgment against the administratrix for the indebtedness owing by the estate on account of the four shares standing in the names of the minors and that the judgment be enforced against property owned by testator when he died and now held by his children and grandchildren."

(c) No different or greater relief could have been obtained by petitioner had he filed suit in the State Equity Court than could have been rendered in the proceedings in the instant case had the Probate Court (and the Appellate Courts on review) exercised the equity jurisdiction clearly vested in them and embraced within the issues raised by petitioner.

B.

Position indicated by the equity courts of Illinois with reference to application of the non-claim statute to contingent claims accruing after the expiration of the time for filing claims, and where inventoried assets are still on hand.

One of the questions suggested by the court at the argument, as we recall it, was whether there were any decisions of the equity courts of Illinois with reference to the application or bar of the Non-Claim Statute where assets were still in the hands of the executor or administrator, and where the claim was contingent and accrued after the expiration of the time for filing claims.

In the short time elapsing between the conclusion of the argument and the filing of this memorandum, many Illinois cases have been examined, but we have been unable to find any case in the equity court, as such, where the foregoing issue was raised and decided. Numerous cases arising in the Probate Court, in the equity courts, and apparently, in other instances, on the law side of the courts, have passed on the general question of the effect and application of the Non-Claim Statute, and they seem clearly to establish the doctrines for which the cases at the bottom of page 22 of petitioner's brief have been cited; that is to say, that where the claim is not filed within the required period, recovery can be had only from assets subsequently discovered and inventoried, or from heirs, devisees, or legatees, after distribution has been made. Statements are contained in some of the equity cases which definitely indicate that a contingent claim arising after expiration of the time limit cannot be collected or enforced even as against assets on hand, but it must be frankly conceded that such statements are required to be treated as dicta, owing to the fact that the precise issue in this connection was not before the court, either due to the fact that distribution had been made, or for other reasons. For example, the statements contained in the opinion of the court in the case of *Union Trust Co.* v. *Shoemaker*, 258 Ill. 564, 570, quoted on pages 7 and 8 of respondent's brief, although considered to be in point by petitioner from the standpoint of a mere statement of principle, must be rejected if considered other than as dicta. Perhaps the same comment should be made with reference to the case of *Mortimer et al.* v. *Potter*, 213 Ill. 178, discussed and quoted on pages 19-21 of petitioner's brief, in view of the fact that although the assets were still available in the hands of the trustees under the will, nevertheless, so far as the probate proceedings were concerned, distribution had been made by delivery of the assets of the estate of

Charles Kavanagh in the probate proceedings, to the trustees under the will.

The case of *Sanders* v. *Merchants' State Bank,* 349 Ill. 547; 182 N. E. 897, 904, contains the following language, which not only reiterates the general rule, but also indicates that no distinction in applying the statute is to be drawn between the law and equity courts.

> (Page 904, Reporter citation.) "A claim not exhibited within the time fixed is not absolutely barred, but its right to participate in the distribution of the assets of the estate actually inventoried or accounted for is lost. *Waughop* v. *Bartlett,* 165 Ill. 124, 46 N. E. 197; *Gross* v. *Estate of Thornson,* 286 Ill. 185, 121 N. E. 600; *Durflinger* v. *Arnold,* 329 Ill. 93, 160 N. E. 172. The rule is applied in equity as well as at law, and, while a mortgagor may foreclose his mortgage in equity after two years without presenting to the administrator or the court the note or other obligation secured by it, he cannot have a deficiency decree for participation in the assets of the estate which have been inventoried or accounted for."

Also see, in this connection:

Morse v. *Pacific Ry. Co.,* 191 Ill. 356; 61 N. E. 104, 106;
Levy v. *Kuss, Administratrix, et al.,* 219 Ill. App. 194.

C.

Concurrent jurisdiction in State and Federal courts to prosecute actions arising under Federal statutes and obligation of the State courts to render relief.

(1) The State and Federal courts have concurrent jurisdiction in the enforcement and collection of assessment liability on national bank stock. *McCormick* v. *Smith,* 130 Pac. 999, 1001, 23 Idaho 487; *Jones* v. *Jenkins,* 22 F. (2d) 642, 644. (Many decisions have been rendered in State

courts enforcing assessment liability on national bank stock, without the question of concurrent jurisdiction being specifically raised, e.g., *Matteson* v. *Dent,* 176 U. S. 521; *Seabury* v. *Green,* 294 U. S. 165, etc.)

(2) Where the Federal law creates a cause of action and does not limit the prosecution of such actions in the Federal courts, the general rule is that the State courts have concurrent jurisdiction. *Robb* v. *Connolly,* 111 U. S. 624, 637; *State of Missouri* v. *Taylor,* 266 U. S. 200, 208.

(3) Petitioner should not be affected in his right to recover, by the fact that suit was filed in the State court rather than in the Federal court. The State Probate court, in the instant case, had full jurisdiction and under the ruling in *Seabury* v. *Green, supra,* the State court should have rendered the relief prayed.

Respectfully submitted,

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